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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,693	01/07/2002	Margaret Ann Kato	659/921	7442
7590 07/08/2004 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER SNOW, BRUCE EDWARD	
			ART UNIT 3738	PAPER NUMBER

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/041,693

Applicant(s)

KATO ET AL.

Examiner

Bruce E Snow

Art Unit

3738

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 40-52 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 40-52 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

Art Unit: 3738

The final Office action dated 11/07/2003 has been withdrawn, a new office action follows:

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Art Unit: 3738

Claims 40-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Repke et al (4,205,679).

Referring to all figures and embodiments, specifically figures 11-13, Repke et al teaches a disposable absorbent pant comprising:

a multi-layer chassis including an outer cover 212, a liner (see column 9, lines 11-16), and an absorbent structure 264 disposed between said outer cover and said liner, said outer cover having a first surface facing said liner and a second surface opposite said first surface, said chassis formed as a pant and including a waist opening and a pair of leg openings, one layer of said multi-layer structure including an extension portion extending beyond an edge of another layer of said multi-layer structure and peripherally surrounding said waist opening; and

a closed-loop waist elastic system including an elongate sleeve member 242, 244 defining an elongate passage therein, said waist elastic system being generally peripherally disposed about said waist opening, and at least one elongate elastic member disposed within said elongate passage, said elongate passage formed by folding said extension portion upon itself and joining an end portion of said extension portion to a surface of said extension portion; see at least figure 11.

Regarding claim 44, "elastic member is substantially freely movable", see column 15 lines 22 et al teaching the elastic members can be intermittently attached.

Art Unit: 3738

Regarding claims 46-50, Repke et al teaches like materials which inherently function the same. Also see column 11, lines 25 et seq.

Claims 40-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Japan (4-35498).

Japan teaches a disposable absorbent pant comprising:

a multi-layer chassis including an outer cover 3, a liner 2, and an absorbent structure 4 disposed between said outer cover and said liner, said outer cover having a first surface facing said liner and a second surface opposite said first surface, said chassis formed as a pant and including a waist opening and a pair of leg openings, one layer of said multi-layer structure including an extension portion 22 extending beyond an edge of another layer of said multi-layer structure and peripherally surrounding said waist opening; and

a closed-loop waist elastic system including an elongate sleeve member 23 defining an elongate passage therein, said waist elastic system being generally peripherally disposed about said waist opening, and at least one elongate elastic member disposed within said elongate passage, said elongate passage formed by folding said extension portion upon itself and joining an end portion of said extension portion to a surface of said extension portion.

Regarding claims 46-50, like materials inherently function the similarly.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

In the alternative, claims 46-50 are rejected under 35 U.S.C. § 103 as being unpatentable over Repke et al (4,205,679) in view of Weil et al (5,242,436).

Repke et al discloses the invention as described above. However, Repke et al is silent in regards to the magnitude of decay of the waist elastic system. Weil et al teaches that elastic materials in a elastic waist system undergoing sustained stress/strain (extension/contraction) have diminishing forces with time (i.e. elastic creep). Therefore, it is desired to make sure this reduction in wearing forces over time doesn't fall below a minimum for wearing stability. **The elastic creep (decay) should be kept to a minimum.** See column 34, lines 51 et seq. (Weil et al further teaches the waist elastic system should not have insufficient contractive forces that result in the diaper slipping down after being worn and loaded. In contrast, excessive contractive forces may reduce the comfort for the wearer producing pressure markings on the wearer's skin. See column 34, lines 20 et al.)

It would have been obvious to one having ordinary skill in the art to have utilized the concept of keeping the elastic decay to a minimum and/or materials

Art Unit: 3738

as taught by Weil et al with the closed-loop waist elastic system of Repke et al to maintain the functional integrity of the waist system over repeated cycling.

In regards to the specific claimed decay values, it would have been obvious to one having ordinary skill in the art to have kept this value to a minimum.

Also, lacking any criticality in the specification, the use of the claimed "decay" values in lieu of those used in the references solves no stated problem and would have been an obvious matter of design choice within the skill of the art.

In the alternative, claims 46-50 are rejected under 35 U.S.C. § 103 as being unpatentable over Japan (4-354948) in view of Weil et al (5,242,436).

Japan discloses the invention as described above. However, Japan is silent in regards to the magnitude of decay of the waist elastic system. Weil et al teaches that elastic materials in a elastic waist system undergoing sustained stress/strain (extension/contraction) have diminishing forces with time (i.e. elastic creep). Therefore, it is desired to make sure this reduction in wearing forces over time doesn't fall below a minimum for wearing stability. **The elastic creep (decay) should be kept to a minimum.** See column 34, lines 51 et seq. (Weil et al further teaches the waist elastic system should not have insufficient contractive forces that result in the diaper slipping down after being worn and loaded. In contrast, excessive contractive forces may reduce the comfort for the wearer

Art Unit: 3738

producing pressure markings on the wearer's skin. See column 34, lines 20 et al.)

It would have been obvious to one having ordinary skill in the art to have utilized the concept of keeping the elastic decay to a minimum and/or materials as taught by Weil et al with the closed-loop waist elastic system of Japan to maintain the functional integrity of the waist system over repeated cycling.

In regards to the specific claimed decay values, it would have been obvious to one having ordinary skill in the art to have kept this value to a minimum.

Also, lacking any criticality in the specification, the use of the claimed "decay" values in lieu of those used in the references solves no stated problem and would have been an obvious matter of design choice within the skill of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW  
PRIMARY EXAMINER